

**FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP PLC**

ATTORNEYS AT LAW

MEMPHIS DOWNTOWN
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
Telephone 901-259-7100
Facsimile 901-259-7150

HISTORIC CASTNER-KNOTT BUILDING
618 CHURCH STREET, SUITE 300
NASHVILLE, TN 37219

(615) 726-1200 telephone
(615) 726-1776 facsimile

MEMPHIS EAST
1100 Ridgeway Loop Road, Suite 400
Memphis, Tennessee 38120
Telephone 901-259-7120
Facsimile 901-259-7180

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TN REGULATORY AUTHORITY
DOCKET ROOM

Charles B. Welch, Jr.
cwelch@farrismathews.com

Reply to
Nashville Office

May 18, 2004

Chairman Deborah Taylor Tate
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

RE: Petition of On-Site Systems, Inc to Expand its Service Area to include an Area
Known as Sevier County
Docket 03-00329

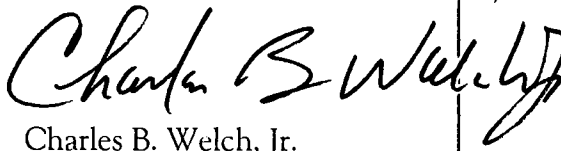
Dear Chairman Tate:

Please find enclosed one (1) original and fourteen (14) copies of East Sevier County Utility District's Memorandum of Law in response to the Notice of Filing in the above referenced matter. Please date and stamp a copy for our records.

Thank you for your assistance regarding this matter. If you have any questions, or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC


Charles B. Welch, Jr.

CBW/ale

**IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

IN RE:

PETITION OF ON-SITE SYSTEMS, INC. TO
AMEND ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY

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Docket No. 03-00329

**EAST SEVIER COUNTY UTILITY DISTRICT'S MEMORANDUM OF LAW
IN RESPONSE TO MAY 10, 2004 NOTICE OF FILING AND STATUS CONFERENCE**

By Notice of Filing and Status Conference dated May 10, 2004, Hearing Officer Randal L.

Gilliam requested that the parties file a Memorandum of Law on the following issue:

Whether the grant of a Certificate of Convenience and Necessity to a public utility (as defined by Tenn. Code Ann. § 65-4-101) providing wastewater treatment services in an identified service area operates to exclude other public utilities or non-utilities (as defined by Tenn. Code Ann. § 65-4-101) from providing wastewater treatment services in the identified service area.

For the reasons set forth hereinbelow, East Sevier County Utility District respectfully submits that the grant of a Certificate of Convenience and Necessity ("CCN") to a public utility providing wastewater treatment services in an identified service area does not operate to exclude other public utilities or non-utilities from providing wastewater treatment services in the identified service area.

The granting of a CCN is governed by T.C.A. § 65-4-201, *et seq.* Nothing in the statute suggests that a grant of a CCN conveys an exclusive right to a public utility to provide services to the exclusion of other service providers. Indeed, T.C.A. § 65-4-201 presumes non-exclusivity, as it permits CCNs to be granted to public utilities in a "territory already receiving a like service from another public utility. . . ." If the first CCN granted for a particular territory were meant to be exclusive and to exclude others from providing services

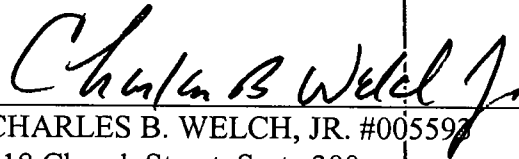
in that territory, then such language would not be necessary. When a statute's language is unambiguous, the intent of the legislature should be derived from the plain and ordinary meaning of the statutory language. Freeman v. Marco Transp. Co., 27 S.W.3d 909, 911 (Tenn. 2000). It must further be assumed that the legislature used word in the statute purposely and that the use of each word conveyed some intent State v. Levandowski, 955 S.W.2d 603, 604 (Tenn. 1997). Under these guidelines, it is clear that additional words (such as "exclusive" or "exclude" in this case) should not be read into statutes.

If a public utility wishes to provide service in a territory for which another public utility has already secured a CCN, that utility is not precluded from applying to the Tennessee Regulatory Authority for such a CCN. Provided that the utility can meet the statutory requirements, the existing CCN does not operate to exclude that utility from providing the service requested. To find otherwise would operate to eradicate competition and consumer choice and would establish a monopoly, which is the antithesis of being in the best interest of the public.

Therefore, the grant of a CCN to a public utility providing wastewater treatment services in an identified service area does not operate to exclude other public utilities or non-utilities from providing wastewater treatment services in the identified service area.

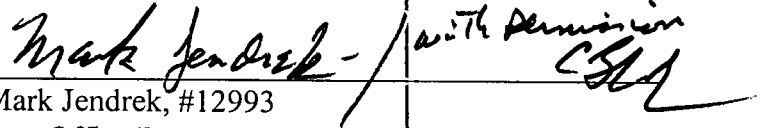
Respectfully submitted,

FARRIS MATHEWS BRANAN BOBANGO
HELLEN & DUNLAP, PLC



CHARLES B. WELCH, JR. #005593
618 Church Street, Suite 300
Nashville, TN 37219
(615) 726-1200

MARK JENDREK, PC



Mark Jendrek, #12993
Post Office Box 549
Knoxville, TN 37901
(865) 824-1900

Attorneys for East Sevier County Utility District

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing Motion has been served upon the following persons on this 18th day of May, 2004 by U.S. Mail, postage prepaid:

Donald L. Scholes
Branstetter, Kilgore, Stranch & Jennings
227 Second Avenue North, 4th Floor
Nashville, Tennessee 37201-1631

G. Scott Thomas
Bass, Berry & Sims, PLC
AmSouth Center
315 Deaderick Street, Suite 2700
Nashville, TN 37238



CHARLES B. WELCH, JR.